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Bloomberg, Daily Mail

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<http://www.bloomberg.com/news/articles/2015-08-10/epa-seen-liable-for-loses-after-colorado-mine-spill-fouls-river>

**EPA May Be Liable for Losses in Colorado Mine Spill**

Mark Drajem

August 10, 3:58PM

The Environmental Protection Agency and its contractors may have to pay millions of dollars for damages after mistakingly releasing toxic sludge that tainted a Colorado river.

Mustard-colored water continued to leak Monday from the long-abandoned Gold King Mine in Silverton, Colorado, and into the Animas River, after the EPA said it “unexpectedly triggered” the Aug. 5 breach. The agency set up a claims process for losses from the 3 million gallons that leaked, three times more than initially estimated.

While the Clean Water Act and environmental rules often exempt federal agencies and clean-up personnel in spills, such protections are voided for negligence by employees or contractors, or if the clean-up crew releases new pollution.

“It’s certainly a black eye for the EPA,” said Thaddeus Lightfoot, a partner at Dorsey & Whitney who often represents industry clients facing action by the agency. “If EPA causes this kind of release, they need to be held responsible, just as a private party would be.”

Acidic water burst from the mine on Aug. 5 as EPA officials dug open the mine portal to investigate the build up of contamination at Gold King. Data released by the agency showed the water contained elevated levels of lead, arsenic and magnesium, all harmful to humans and the environment. The river flows south and into the San Juan River in New Mexico.

## Navajo Emergency

Some water systems on the Navajo Nation, which is south of Colorado, have shut intake systems on the San Juan River, according to the Associated Press. Navajo President Russell Begaye said the tribe is frustrated with the EPA, and he threatened to take legal action, AP reported.

The EPA, through its Superfund program, has investigated the toxic chemicals in water and soil around abandoned mines near Silverton, in the mountains of southwest Colorado. Water quality has worsened in the Animas River since 2008, with higher levels of heavy metals that make it toxic to most trout. Costs for such river contamination can exceed \$100 million in U.S. fines and remediation.

After a Duke Energy Corp. coal-disposal pond sprung a leak and contaminated North Carolina's Dan River last year, the company pleaded guilty and agreed to spend \$34 million on river and wetlands projects nearby and pay a \$68 million criminal fine.

## Mine Caps

In Colorado, the EPA was preparing to install a drainage pipe from the Gold King Mine, as part of a project to cap a nearby mine. Of about 200 mines, local environmental groups identified about 30 that need work, said Peter Butler, a co-coordinator of the Animas River Stakeholders Group.

"They made some mistakes," Butler said of the EPA. "It would have behooved them to talk to more people before they got in there."

EPA has apologized and opened the claims process on Sunday, saying businesses or residents facing personal injury or property damage could file a claim for "damage caused by U.S. government actions."

"Although EPA's regulations state that the EPA has six months to resolve a claim, the agency will make every effort to respond to Gold King Mine spill claims as soon as possible," the agency said on its

website.

Following the spill, the local sheriff's office on Aug. 6 closed the river to swimming, kayaking and rafting. EPA advised downriver farmers and cities to close water intakes, and some officials said a lack of irrigation water could cause hardships.

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### **Daily Mail**

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<http://www.dailymail.co.uk/news/article-3192557/Officials-admit-waste-spill-Colorado-actually-THREE-TIMES-larger-thought-contaminated-water-turning-rivers-orange-laced-arsenic.html>

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**Officials admit that waste spill from Colorado mine was actually THREE TIMES larger than they thought... and that the contaminated water turning rivers orange was laced with arsenic**

Christopher Brennan

August 10, 2:18 PM

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Federal officials have admitted that the flood of mine waste that turned a Colorado river putrid orange was actually three times than they first thought.

The US Environmental Protection Agency said a team was working with heavy equipment last week to secure an entrance to the Gold King Mine, near Durango, when three million gallons of waste was unleashed into nearby Cement Creek

The creek runs from Silverton, Colorado, into the Animas River before flowing into the San Juan River at Farmington, New Mexico, where discolored water has been seen 100 miles from the spill.

Officials said that the spillage did not pose a threat to drinking water after municipalities shut down intake valves from the contaminated rivers. They have also now insisted that the accident would not have 'caused significant health effects' to animals because of how quickly it moved.

However, preliminary studies of the water near Durango, Colorado, found that arsenic levels peaked at 300 times more than normal and lead levels at one point reached 3,500 times more than usual.

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Officials have said that drinking water was still safe, though those using wells in areas of northern New Mexico have been told to get their supply tested. Above, Dan Bender from the La Plata County Sheriff's Office takes a sample of the water in Animas River on Thursday

The Environmental Protection Agency's Deborah McKean said that the fact that arsenic was at one point 300 times its normal level was scary, but said that the contaminants were not in one place for very long.

'Yes, those numbers are high and they seem scary,' said Deborah McKean, the EPA's chief of the Region 8 Toxicology and Human Health and Risk Assessment.

The metals are dangerous to humans in high concentrations, but McKean insisted that the contaminants were not in one place for long in the river and that individual exposure to them would be low, according to the Farmington Daily Times.

Officials had previously said that drinking water would not be affected, but those in northern New Mexico with wells have been told to have their water tested before using it to drink, give to livestock, cook or bathe.

The EPA said its cleanup team had been working at the Gold King Mine on Wednesday. 'The project was intended to pump and treat the water and reduce metals pollution flowing out of the mine,' said agency spokesman Rich Mylott.

A coordinator for the Gold King Mine project, Hays Griswold, told The Durango Herald that he'd thought only five feet of water was being held behind the collapsed entrance to the mine.

He was going to install a pipe to remove the trapped contaminated water, which had been leaking slowly into the creek. However, when Griswold's crew made a hole in the mine tunnel, he noticed water seeping through the dirt.

Some had suspected that the spill would quickly kill local wildlife, though only one fish in a study had died as of Monday.

Griswold, who was filling in this week for the project's long-term coordinator, then realized there was 12 feet on water behind it. It eroded the dirt and burst forth. 'There was no stopping it at any time,' he said.

The polluted water 'was held behind unconsolidated debris near an abandoned mine portal', said the EPA in a statement.

Durango resident Lisa Shaefer said she was near the mine Wednesday when a mine bulwark broke and sent a torrent of water downstream that raised the water level two to three feet in Cement Creek. The wall of water carried rocks and debris and made a roar as it pushed through a culvert, she said.

'What came down was the filthiest yellow mustard water you've ever seen,' she told the newspaper of the normally scenic waterway that was a backdrop for Butch Cassidy And The Sundance Kid and is popular with summer boaters.

No workers were harmed during the spill.

Officials at the time emphasized that there was no threat to drinking water from the spill. But downstream water agencies were warned to avoid Animas River until the plume passed, said David Ostrander, director of EPA's emergency response program in Denver.

Local cities mostly pull from the Florida River, though local farmers often use the Animas and San Juan for their needs.

Officials have now stated that they are unsure about what health risks exposure to the water may cause.

Water tests from Durango are still being analyzed and the EPA and New Mexico are offering free well testing this week.

Residents of towns such as Aztec, New Mexico, are also able to fill up to 100-gallon tanks at local potable water stations.

La Plata County and Durango both declared states of emergency 'to convey the grave concerns' about the situation to high levels of government.

The Navajo Nation President Russell Begaye had not yet signed a declaration of emergency as of late Sunday.

Vice President Jonathan Nez attended a meeting in Durango on Sunday and said that water was especially important to his nation and livestock farmers in it.

'A lot of livestock utilize the water. What are we supposed to do? Stand guard 24 hours to keep our livestock from drinking the water?' he said, according to the Daily-Times.

One farmer said that he would not be able to irrigate his fields for the rest of the season and would lose his crops.

EPA spokespeople weren't sure how long it would take the plume to dissipate, Ostrander said. The acidic sludge's heavy metals could irritate the skin, he added.

The EPA is still testing the plume. Previous contamination from the mine sent iron, aluminum, cadmium, zinc and copper into the water, said Peter Butler, co-coordinator of the Animas River Stakeholders Group.

Contaminants originally made the water's pH drop from 7.8 to 5.8, according to tests from Colorado Division of Reclamation, Mining and Safety scientist Kirstin Brown.

A neutral pH is 7, and each whole number below that represents a tenfold increase in acidity, meaning that the Animas has become 100 times more acidic.

Marcie Bidwell, executive director of the Mountain Studies Institute, said that the river's pH had returned to safe levels by Sunday night.

The plume of contaminants made its way south toward Durango on Thursday afternoon, prompting La Plata County health officials to warn rafters and water users to avoid the river.

It was expected to hit the Colorado-Utah border early Monday as it headed towards Montezuma Creek near the scenic town of Bluff.

Two wells serving Montezuma Creek will be shut down, Rex Kontz, deputy general manager for the Navajo Tribal Utility Authority, said.

In Farmington, New Mexico, officials shut down water-supply intake pumps to avoid contamination and advised citizens to stay out of the river until the discoloration has passed.

'It's really, really ugly,' Butch Knowlton, La Plata County's director of emergency preparedness, told The Durango Herald. 'Any kind of recreational activity on the river needs to be suspended.'

The mine was opened more than a hundred years ago and its permit was revoked in 2005.

'The most important thing is what's in (the water). I need to know. Back in the 1800s, things were used in mining that aren't allowed any more.' Steve Salka, Durango's utilities manager, told the Denver Post when researchers were working to find out the plume's contents.

There were already few fish in the Cement Creek watershed because of longstanding problems with water quality, the Colorado Department of Public Health and the Environment said.

However the creek and Animas River flow into San Juan, which contains endangered species such as the Colorado Pikeminnow and Razorback Sucker.

Colorado Parks and Wildlife placed cages containing fish in the Animas River to monitor what happens to them, spokesman Joe Lewandowski said.

As of Monday only one of 108 had died, according to the Guardian.

'We'll see if those fish survive,' Lewandowski said. 'We're also monitoring to make sure we don't get infiltration into the hatchery, because that could be a problem.'

Metro State University's water expert Tom Cech told 9 News, 'What a tragedy for the aquatic wildlife.

'It could be a few years where it's somewhat rehabilitated, or it could be decades. It really depends on future drought scenarios.'

Mountain Studies Institute scientist Scott Roberts said that macroinvertebrates such as snails and crustaceans had not died after being exposed, which was a good sign. However, worries remained about long-term effects.

The EPA's response to the incident quickly came under criticism from those downriver last week.

New Mexico Governor Susana Martinez's office said it was angry that it first heard about the spill from the state's southern Ute tribe - rather than the agency itself.

A spokesman told KOB, 'The Governor is disturbed by the lack of information provided by the EPA to our environmental agencies in New Mexico and strongly believes that people in our communities downstream deserve to have all the information about this situation.'

The Gold King Mine is still leaking 500 gallons per minute, but the waste is going into newly dug ponds.

The EPA provided information about filing a claim for 'compensating citizens who suffer personal injury or property damage caused by US government actions' in a Sunday release.

Federal officials have previously lobbied to have the Gold King Mine site added to the national Superfund list, which would give access to federal money to cleanup hazardous waste.

A proposal to add the area was abandoned in 2008 because of community opposition, though discussions about the designation have begun again.